

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

01-CR-6001L
01-CR-6002L
01-CR-6078L

v.

ANTHONY F. LEONARDO, JR.,

Defendant.

Sentencing proceedings are pending in these cases pursuant to a remand from the United States Court of Appeals for the Second Circuit. During the time the parties were preparing for these proceedings, the defendant, Anthony F. Leonardo, Jr. ("Leonardo"), suffered severe head injuries while in the custody of the Bureau of Prisons. I understand that defendant has been moved to a medical facility at Rochester, Minnesota. Based on anecdotal reports, it appears that defendant's condition has improved somewhat since the incident in June, 2008.

In order to determine whether, and when, to proceed with the matters now pending here in district court, I need a complete report on the defendant's medical and mental condition. Representatives of the Bureau of Prison have advised AUSA Charles Wydysh that Leonardo suffers

from "dementia due to traumatic brain injury." Absent some type of report, it is unclear what that means as it relates to defendant's ability to proceed.

After consulting with counsel on October 14, 2008, it was agreed to adjourn the matter for status with counsel to December 16, 2008 at 4:00 p.m. Prior to that date, I direct the Government to obtain a complete medical report concerning Leonardo. I am, of course, interested in a clarification of his present diagnosis, when and if he might be fit to travel to court at Rochester, New York and, especially, whether his brain injury affects Leonardo's ability to understand the nature of the proceedings against him and assist properly in his defense. I also suggest that before meeting on December 16, defense counsel contact Leonardo and discuss the pending matters.

At this point, since neither the Government nor the defendant has filed a motion for a mental competency hearing pursuant to 18 U.S.C. § 4241(a) and because I do not have sufficient information to order such a hearing on my own motion, I believe the above-described action will assist the Court and counsel in determining how best to proceed.

The issue of "competency" is my principal concern at this point. If Leonardo is unable to travel, there still may be an ability to proceed with Leonard participating via videoconferencing. It is also true that before Leonardo's injury, he waived his personal appearance for the pending proceedings.

The matter relates to sentencing, and there is a pending motion so, although the Speedy Trial Act does not appear to be implicated, out of an abundance of caution, I will exclude the time from October 14, 2008 until December 16, 2008, in the interest of justice, pursuant to 18 U.S.C. § 3161(h)(1)(A); 3161(h)(8).

CONCLUSION

The Attorney General and the Bureau of Prisons are ordered to provide this Court with a medical report on the physical and mental condition of inmate Anthony F. Leonardo, Jr. currently housed at the Federal Correctional Institution at Rochester, Minnesota. That report should explain the nature and significance of "dementia due to traumatic brain injury." The report should state not only a diagnosis but a prognosis for recovery, including the ability of the defendant to travel to Rochester, New York for court proceedings, and whether the injury affects Leonardo's ability to understand the nature of the sentencing proceedings now pending and to assist his attorneys in that matter.

Since defense counsel and the Government have requested this report, the report is to be submitted by November 21, 2008, to the Court and counsel for the Government, Charles B. Wydysh, Esq., U.S. Attorney's Office, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202 and counsel for the defendant, John R. Parrinello, Esq., 36 West Main Street, Suite 400, Rochester, New York 14614.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 16, 2008.